

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

MARCH 14, 2002

IN RE:

PETITION OF MCI WORLDCOM, INC.
TO ENFORCE INTERCONNECTION
AGREEMENT WITH BELL SOUTH
TELECOMMUNICATIONS, INC.

DOCKET NO.
99-00662

SECOND INITIAL ORDER OF HEARING OFFICER

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") for consideration of the *Motion for Sanctions* filed by MCI metro Access Transmission Services, Inc. ("MCI," "MCI metro," "MCIm," or "WorldCom").

BACKGROUND

This is a dispute over an Interconnection Agreement (the "Agreement") between MCI metro and BellSouth Telecommunications, Inc. ("BellSouth"). In the first phase of this docket, the parties presented the issue of whether the Agreement requires payment of reciprocal compensation for calls to Internet service providers, or ISPs.¹ In the *Initial Order of Hearing Officer on the Merits* (the "First Initial Order") in this matter, issued on June 15, 2001, the Hearing Officer ordered that:

1. The parties shall treat ISP-bound traffic as local traffic under this Agreement and shall pay reciprocal compensation for such traffic in accordance with the Agreement and the FCC's *Order on Remand and Report and Order*, CC Docket No. 96-98 and CC Docket No. 99-68, released on April 27, 2001.
2. BellSouth shall immediately pay MCI metro any reciprocal compensation payments due for ISP-bound traffic which it has withheld.
3. BellSouth shall pay MCI metro reciprocal compensation for all ISP-bound and other local traffic at the switching rate applicable to the

¹ See *BellSouth Telecommunications, Inc.'s List of Issues*, March 10, 2000; *MCI WorldCom's Preliminary List of Issues*, March 15, 2000.

switching actually performed. . . .²

On July 2, 2001, MCI filed a *Petition for Review of the Initial Order*. On July 6, 2001, MCI filed a *Withdrawal of Petition for Review and Request for Enforcement of Final Order*, in which MCI stated:

In order to bring this matter to a close and expedite enforcement of the Initial Order, MCImetro has decided to withdraw its Petition for Appeal.

. . .

MCImetro further requests that the Authority direct BellSouth to comply with the Final Order by a date certain. Although BellSouth has been ordered to make payment “immediately,” MCImetro requests that a specific deadline should be established so that there will be no debate or misunderstanding by the parties – or the agency – regarding BellSouth’s compliance with the Order.³

MCI requested that the Authority direct BellSouth to comply with the June 15, 2001 Order by making payment to MCI on or before July 13, 2001.

At the July 10, 2001 Authority Conference, the Directors of the Authority unanimously voted to direct BellSouth to make payment to MCI, as ordered in the *First Initial Order*, on or before July 13, 2001.⁴ The Directors determined that such action was appropriate to expedite enforcement of the *First Initial Order* and consistent with the requirement, stated therein, that BellSouth make payment to MCI “immediately.”

In an *Order* issued on July 12, 2001, the Authority directed that:

On or before July 13, 2001, BellSouth Telecommunications, Inc. shall make all payments due to MCImetro Access Transmission Services, Inc. as ordered in the Hearing Officer’s Initial Order issued on June 15, 2001.⁵

On August 17, 2001, MCI filed a *Motion for Sanctions* (the “*Motion for Sanctions*”) in this matter, alleging that BellSouth had failed to pay MCI \$10.2 million pursuant to the *First*

² *Initial Order of Hearing Officer on the Merits* (June 15, 2001), pp. 30-31.

³ *Withdrawal of Petition for Review and Request for Enforcement of Final Order*, July 6, 2001, p. 2.

⁴ Transcript of Authority Conference, July 10, 2001, p. 31.

⁵ *Order*, July 12, 2001, p. 3.

*Initial Order.*⁶ MCI requested that the Authority:

- (1) Order BellSouth to pay immediately the full \$10.2 million owed to MCImetro;
- (2) fine BellSouth \$1,000 (*see* T.C.A. § 65-3-105) for each day BellSouth fails to comply with the July 12, 2001 Order;
- (3) take such other action (*see* T.C.A. § 65-3-105) as may be necessary to enforce the July 12, 2001 Order;
- (4) order BellSouth to reimburse MCImetro for the costs, including legal fees, of bringing this motion.⁷

On August 21, 2001, MCI filed the Affidavit of Dan Aronson in support of its *Motion for Sanctions*. On August 24, 2001, BellSouth filed a response to the *Motion for Sanctions*.⁸ On September 6, 2001, MCI filed a reply in support of its *Motion for Sanctions*.⁹ On September 7, 2001, BellSouth filed the Affidavit of Richard McIntire. On September 10, 2001, MCI filed a supplemental reply.¹⁰

At the regularly scheduled Authority Conference held on September 11, 2001, the Authority established a procedural schedule for the purpose of considering MCI's *Motion for Sanctions*. This schedule, as memorialized in the Authority's *Notice of Procedural Schedule and Hearing* issued on September 11, 2001, set this matter for a hearing before the Hearing Officer on September 25, 2001.

On September 14, 2001, BellSouth filed a *Motion for Brief Extension of Hearing Schedule*, requesting that the hearing be postponed due to a conflict with a hearing before the Florida Public Service Commission. On September 20, 2001, the parties filed a *Joint Motion* requesting that the hearing be reset for October 17, 2001.¹¹ In an *Order* dated September 21,

⁶ *Motion for Sanctions Against BellSouth Telecommunications, Inc. for Failure to Comply with TRA Order*, August 17, 2001.

⁷ *Motion for Sanctions*, August 17, 2001, p. 2.

⁸ *BellSouth Telecommunications, Inc.'s Response to MCImetro Access Transmission Services, Inc.'s Motion for Sanctions for Failure to Comply with TRA Order*, August 24, 2001.

⁹ *Reply of MCI WorldCom in Support of Motion for Sanctions*, September 6, 2001.

¹⁰ *Supplemental Reply of MCI WorldCom in Support of Its Motion for Sanctions*, September 10, 2001.

¹¹ *Joint Motion of BellSouth Telecommunications, Inc. and MCImetro Access Transmission Services, Inc. for Change in Schedule*, September 20, 2001.

2001, the Hearing Officer granted BellSouth's September 14, 2001 *Motion* and the parties' September 20, 2001 *Joint Motion*, except as to the hearing dates proposed therein, and set a hearing on MCI's *Motion for Sanctions* for October 12, 2001.¹² On September 21, 2001, BellSouth filed the Rebuttal Testimony of Richard McIntire and Patrick Finlen, and MCI filed the Rebuttal Testimony of Dan Aronson.

Pursuant to the September 21, 2001 *Order*, a Hearing was held on MCI's Motion for Sanctions on October 12, 2001. In attendance at the Hearing were the following parties:

MCI WorldCom, Inc. – **Henry Walker, Esq.**; Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, Nashville, TN 37219; **Mickey Henry, Esq.**; 6 Concourse Parkway, Suite 3200, Atlanta, GA 30328

BellSouth Telecommunications, Inc. – **Joelle Phillips, Esq.** and **Guy Hicks, Esq.**; 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300

At the Hearing, Mr. Dan Aronson testified on behalf of MCI and was cross-examined by counsel for BellSouth. Mr. Patrick C. Finlen and Mr. Richard McIntire testified on behalf of BellSouth and were cross-examined by counsel for MCI. Mr. Aronson, Mr. Finlen, and Mr. McIntire also responded to questions from the Authority. Pursuant to a *Notice of Filing* issued on October 31, 2001, each party filed a post-hearing brief on November 7, 2001. By letters dated November 14, 2001, the Authority submitted separate data requests to the parties, and the parties have filed responses to the Staff's data requests.¹³

Judicial Notice of Prior Testimony

As requested by BellSouth during the Hearing¹⁴ and in a separate motion filed on November 7, 2001, and without objection from MCI, the Hearing Officer takes judicial notice of the following testimony:

¹² *Order Addressing Motion for Brief Extension and Joint Motion and Resetting Hearing*, September 21, 2001.

¹³ MCI filed its responses on November 28, 2001, and BellSouth filed its responses on November 28 and 29, 2001.

¹⁴ Transcript of Proceedings, October 12, 2001, pp. 41-44.

1. Direct Testimony of Steven R. Brenner filed on behalf of MCI Telecommunications Corporation on September 12, 1996, Docket No. 96-01152, pages 37-43 (attached as Exhibit "A").

2. Direct Examination of Sherry Lichtenberg on May 7, 2001, Docket No. 00-00309, transcript of proceedings, pages 21-27 (attached as Exhibit "B").¹⁵

POSITIONS OF THE PARTIES

With its *Motion for Sanctions*, MCI submitted the Affidavit of Dan Aronson, identified as Director of Carrier Billing Services for WorldCom. The following statements from Mr. Aronson's Affidavit frame the issues at this stage of this docket:

4. On July 2, 2001, WorldCom filed its Withdrawal of Petition for Review and Request for Enforcement of Final Order. At that time, I was asked to prepare a pro forma schedule from MCImetro's records which disclosed the amounts due with local minutes of use rerated throughout the history of the account at the \$.004 per minute of use (mou) end office reciprocal compensation rate to conform to the Hearing Officer's decision. This account history showed the amounts due at the lower rates and credited BellSouth with the payments applied by WorldCom. This account history also showed the (1) the date of and invoice number of the connectivity bill; (2) the usage broken out by local and toll usage terminated by BellSouth's customers to MCImetro's customers; (3) the amount due for reciprocal compensation at the \$.004 rate (4) a calculation of the finance charges on the outstanding balances at 1% per month, simple interest and, adjustments appearing on the invoices. The total amount due to MCImetro was \$10.2 million. . . .

5. As I understand, this schedule was made available to BellSouth on Tuesday, July 10, 2001 by WorldCom's local counsel. On that same day, the TRA ordered that BellSouth make payment to MCImetro the amounts due for reciprocal compensation by July 13, 2001. On July 16, 2001, BellSouth sent a letter to WorldCom which indicated that they had found "significant discrepancies" with the account history and schedule that was provided. As a result, BellSouth indicated that they were unilaterally adjusting the account history schedule and remitting an initial payment of \$2,223,231 and a second payment of \$700,000. Thus, on the total amount due of \$10.2 million, BellSouth made payment of approximately \$2.9 million in response to the TRA's order directing payment. . . .

6. This action by BellSouth to make unilateral adjustments to invoiced usage billings and withhold payment based on those adjustments is typical of the pattern and practice I have observed throughout the period

¹⁵ BellSouth Telecommunications, Inc.'s Motion to Take Judicial Notice of Prior Testimony, November 7, 2001.

that I have been responsible for connectivity billings to BellSouth. The "significant discrepancies" alleged by BellSouth as the basis for their continued withholding of reciprocal compensation amounts due fall into three categories;

(a) BellSouth unilaterally calculated a retroactive credit to re-rate local usage billings for the period from April 4, 2000 through July, 2001 at the end office reciprocal compensation rate recently filed by BellSouth. This resulted in BellSouth's decision to withhold approximately \$2.6 million of the \$10.2 million due.

(b) BellSouth unilaterally excluded approximately 166 million mou of local usage from the account history and schedule based on their assertion that MCImetro had billed BellSouth for more local terminating local usage [sic] than BellSouth switches show were originated. This resulted in BellSouth's decision to withhold approximately \$1 million of the \$10.2 million due.

(c) BellSouth unilaterally re-rated the usage billings shown on the account history and schedule to apply a Percent Local Usage (PLU) factor developed by BellSouth, in lieu of the terminating switch recordings and actual measurements utilized by WorldCom to separate usage billings between local usage at reciprocal compensation rates and toll usage at terminating switched access rates. This resulted in BellSouth's decision to withhold approximately \$3.5 million of the \$10.2 million due.¹⁶

Re-rating of Local Usage Billings for the Period from April 4, 2000 through July 2001

In support of its position that BellSouth improperly re-rated local usage billings for the period from April 4, 2000 through July 2001, MCI relies upon the provisions of Part A, Section 3, which sets the term of the Agreement at three (3) years and provides for the negotiation of a "Follow-on Agreement" upon expiration of the Agreement.¹⁷ Section 3 also provides for establishment by the TRA of a Follow-on Agreement in the event the parties are unable "to satisfactorily negotiate new terms, conditions and prices," with the express wish that the TRA will establish its Follow-on Agreement by Order issued before the current Agreement expires.¹⁸

Section 3 further states:

¹⁶ Affidavit of Dan Aronson, August 21, 2001, pp. 1-2.

¹⁷ See, e.g., *Post-Hearing Brief and Proposed Findings of MCI WorldCom, Inc.*, November 7, 2001, p. 7.

¹⁸ Interconnection Agreement, Part A, Section 3. MCI agrees that when the Follow-On Agreement is signed, "there will be a true-up of all rates back to April, 2000." Transcript of Proceedings, October 12, 2001, p. 10 (Testimony of Dan Aronson); see also *id.*, p. 19.

The Parties further agree that in the event the State regulatory body does not issue its order by the expiration date of this Agreement or if the Parties continue beyond the expiration date of this Agreement to negotiate without State regulatory body intervention, the terms, conditions and prices ultimately ordered by the State regulatory body, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement. Until the Follow-on Agreement becomes effective, BellSouth shall provide Services pursuant to the terms, conditions and prices of this Agreement that are then in effect.¹⁹

MCI argues:

The MCImetro Agreement is a currently effective interconnection agreement between MCImetro and BellSouth. Part A, Section 3 of that agreement provides that the term of the agreement is three years from the date of its execution (April 4, 1997). The section further recognizes that the parties may not be able to reach an agreement before the expiration of the three years and that the parties will continue to perform under the existing agreement until a new agreement is executed. In that event, Section 3 states that the rates, terms and conditions will be retroactive to the date of the expiration of the existing agreement (or April 4, 2000). At the time the next MCImetro-BellSouth interconnection Agreement is executed, the results of the TRA-ordered UNE rates in Docket No. 97-01262 will be incorporated into the pricing schedule of the new interconnection agreement and both BellSouth and MCImetro will be required to issue retroactive credits on accounts to reflect the lower UNE and reciprocal compensation rates. (Direct Testimony of Dan Aronson, 8/17/01 Affidavit, paragraph 7).

The existing MCImetro Agreement has not been amended and a new interconnection agreement has not been executed between the parties. The new interconnection agreement is presently the subject of an arbitration proceeding before the TRA. (Direct Testimony of Dan Aronson, 8/17/01 Affidavit, paragraph 8). Unless and until a new interconnection agreement or an amendment to the existing interconnection agreement is executed to reflect the UNE and reciprocal compensation rates in the BellSouth Tariff filed pursuant to the TRA's February 23, 2001 Order in Docket No. 97-01262, the appropriate reciprocal compensation rate to be paid by BellSouth to MCImetro is the direct end office termination rate of \$.004 per minute of use.

BellSouth cites Attachment I, Section 1.1 and Attachment IV, Section 2.2.1 for the proposition that the direct end office termination rate contained in the MCImetro Agreement changed automatically when the TRA issued its February 23, 2000 Order. (Direct Testimony of Patrick Finlen, pg. 8, lines 1-3) This argument is unavailing. As an initial matter, the TRA Order, by its terms, directed BellSouth to file a tariff to "*provide the parties the opportunity to adopt UNE rates established in a contested*

¹⁹ Interconnection Agreement, Part A, Section 3.

case proceedings that are consistent with the Act.” Furthermore, the BellSouth Tariff, by its terms, provides that the “provisions of this Tariff do not supercede [sic] or in any way modify the provisions, including rates, terms and conditions, of any currently effective agreement between any CLEC and the Company.”²⁰

In support of its position that it was entitled to re-rate local usage billings for the period from April 4, 2000 through July 2001, BellSouth relies²¹ upon the following provision of the Agreement, contained in Attachment I, “Price Schedule”:

1. General Principles

1.1 All rates provided under this Agreement are interim, subject to true-up, and shall remain in effect until the Authority determines otherwise or unless they are not in accordance with all applicable provisions of the Act, the Rules and Regulations of the FCC in effect, or the Authority’s rules and regulation, in which case Part A, Section 2 shall apply.²²

BellSouth argues that this section provides that “the rates in the Interconnection Agreement are interim and subject to true-up until the TRA sets permanent prices.”²³ On the basis that the “TRA ordered a rate of \$0.0008041 per minute of use on December 19, 2000,” BellSouth states that it “calculated the reciprocal compensation for the period after April 3, 2000,

²⁰ *Post-Hearing Brief and Proposed Findings of MCI WorldCom*, November 7, 2001, pp. 11-13. The full text of the Tariff subsection to which MCI refers is as follows:

The provisions of this Tariff do not supersede or in any way modify the provisions, including rates, terms, and conditions, of any currently effective agreement between any CLEC and the Company. If and when a term or condition found in the tariff conflicts with a term or condition found in an interconnection agreement, the term or condition found in the interconnection agreement shall prevail.

BellSouth Competitive Local Exchange Carrier Tariff, Section C1.1.E.

²¹ See, e.g., *BellSouth Telecommunications, Inc.’s Post-Hearing Brief*, November 7, 2001, p. 3.

²² Interconnection Agreement, Attachment I, p. 1.

²³ Direct Testimony of Patrick C. Finlen, September 18, 2001, p. 6.

using the new TRA-ordered rate.”²⁴

BellSouth also relies upon Attachment IV, Section 2.2.1, which provides in pertinent part that “[t]he Parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the TRA.”²⁵ On the basis of this section, BellSouth contends that “an amendment” is not “necessary to effectuate the TRA’s ordered rate for end office switching.”²⁶ BellSouth states that “the rate under this contract changed automatically when the rate in the ‘Order of the TRA’ changed.”²⁷

Exclusion of Approximately 166 Million Minutes of Use from Account History and Schedule

With regard to BellSouth’s exclusion of approximately 166 million minutes of use, MCI’s position appears in the Affidavit of Dan Aronson,²⁸ who cites Section 7 of Attachment IV. This section states, in pertinent part:

Section 7. Usage Measurement

7.1 Each party shall calculate terminating interconnection minutes of use based on standard Automatic Message Accounting (AMA) recordings made within each party’s network. These recordings being necessary for each party to generate bills to the other party.

...

7.3 Where MCI provides local exchange services via switch

²⁴ *Id.*, p. 6; see also Rebuttal Testimony of Patrick C. Finlen, September 21, 2001, p. 5:

Table 1 of Attachment 1 of the Interconnection Agreement sets forth an **interim** rate for end office switching – local termination at \$0.004 per minute of use. On December 19, 2000, in Docket No. 97-01262, the Authority set permanent rates for certain unbundled network elements, one of which was end office switching. The permanent rate set by the Authority for this element is \$0.0008041 and must, as called for in the Interconnection Agreement, be used for the determination of reciprocal compensation.

At the October 12, 2001 Hearing, Mr. Finlen stated that the \$0.0008041 rate “should be applied to the beginning of the contract, which was April 4, 1997” and that this “has been my position all along.” Transcript of Proceedings, October 12, 2001, pp. 107-113. Mr. Finlen attributed this discrepancy in BellSouth’s position to Mr. McIntire’s being unaware of Attachment I, Section 1.1 and not having consulted Mr. Finlen. *Id.*, p. 107. Mr. Finlen further testified:

Q. So the schedule that Mr. McIntire filed in his direct testimony, which charge 004 up until April of 2000 and 0008 thereafter, is no longer BellSouth’s position in this case?

A. That is correct.

Id., p. 109. BellSouth did not repeat this position in its Post-Hearing Brief.

²⁵ Interconnection Agreement, Attachment IV, Section 2.2.1.

²⁶ Direct Testimony of Patrick C. Finlen, September 18, 2001, p. 7.

²⁷ *Id.*, p. 8.

²⁸ Affidavit of Dan Aronson, August 17, 2001, p. 3.

facilities, each party shall provide to the other, within 20 calendar days after the end of each BellSouth fiscal quarter (commencing with the first full fiscal quarter after the effective date of this agreement), a usage report with the following information regarding traffic originating from facilities provided by the originating party and terminated over the Local Interconnection Trunk Groups:

7.3.1 Total traffic volume described in terms of minutes and messages and by call type (local, toll, and other) at the state level terminated to each other over the Local Interconnection Trunk Groups and

7.3.2 Percent Local Use (PLU) [sic]²⁹

Mr. Aronson explained in his Affidavit:

Notwithstanding this very clear provision that connectivity billings were to be generated by the terminating party based on the usage recordings made at the terminating party's switch, BellSouth began unilaterally withholding payment on MCImetro connectivity billings in January, 2000 and indicated in their cover letter simply that, "We are paying usage based on BellSouth's [the originating party] recordings". Thereafter, on each MCImetro connectivity bill, BellSouth began unilaterally "adjusting" the terminating usage presented on the WorldCom invoices to reflect the usage that was alleged to be indicated by the BellSouth originating recordings.³⁰

Mr. Aronson goes on to state that he requested that Mr. McIntire of BellSouth "provide the BellSouth usage 'measurements that challenge the measurements made by our systems.'"³¹ However, Mr. Aronson states, "[n]either Mr. McIntire nor his staff has ever responded to this request by providing the data necessary to perform the reconciliation of alleged usage variations in Tennessee."³² Mr. Aronson further states that "[t]o date, BellSouth has not provided WorldCom with the data needed to isolate and resolve the alleged variance between the terminating usage measured via AMA recordings on WorldCom's local switch and BellSouth's unsupported originating usage data."³³

²⁹ Interconnection Agreement, Attachment IV, Section 7.

³⁰ Affidavit of Dan Aronson, August 21, 2001, p. 4.

³¹ *Id.*

³² *Id.*

³³ *Id.*, p. 5.

Mr. Aronson disputes BellSouth's contention that MCImetro was billing BellSouth for transit traffic. He states:

MCImetro billing systems excludes [sic] from usage billed to BellSouth the traffic that was originated by other carriers. Attachment IV Interconnection, Section 3 of the contract specifies the signaling protocol to be utilized between the MCImetro and BellSouth network. As described in that Section, the originating carrier (BellSouth) is required to provide signaling parameters that will include the telephone number (NPA/NXX) of the calling party to the terminating carrier's (MCImetro) switch. From this originating call information, the MCImetro billing system can identify the Local Exchange Carrier from which each call originated by comparing the originating NPA/NXX to industry published reference tables. In cases where calls are originated from ported numbers, the originating local routing number (LRN) is used to determine the Local Exchange Carrier that originated the call. For connectivity bills sent to BellSouth, the MCImetro billing system excludes usage originating from telephone numbers that are not BellSouth's.³⁴

At the October 12, 2001 Hearing, Mr. Aronson explained that MCI's local calling area "covers all of Tipton, Fayette, and Shelby Counties [in Tennessee] with some outlying areas in Mississippi and Arkansas."³⁵ Mr. Aronson further testified:

Q. Now would any call made within that area be rated as a local call by MCImetro?

A. Yes.

Q. Would any call from a BellSouth customer located in that area to MCImetro be rated as a local call by MCImetro?

A. Yes.

Q. Is it your understanding that this local calling area is the same as BellSouth's local calling area?

A. Yes.

Q. So any call that BellSouth would rate as a local call in this area, MCImetro would rate as a local call?

A. Yes, as a true local call.³⁶

Mr. Aronson added that MCI's definition of a local calling area does not include any optional calling plans that customers may have.³⁷ Mr. Aronson also testified that by using its AMA

³⁴ Rebuttal Testimony of Dan Aronson, September 21, 2001, pp. 5-6.

³⁵ Transcript of Proceedings, October 12, 2001, p. 79 (Testimony of Dan Aronson).

³⁶ *Id.*

³⁷ *Id.*, p. 80.

recordings MCI is capable of identifying and accounting for transit traffic:

Q. How does MCI identify what I call transient traffic or what the parties call transient traffic? How do you identify that?

A. Every originating NPA/NXX has an association with the operating company number, and those operating company numbers are embedded in our summary records. And we bill BellSouth for traffic that is associated with their OCN. We don't bill them for traffic that is associated with the OCN's of other originating carriers.³⁸

In response to BellSouth's assertion that MCI was arguing, incorrectly, that BellSouth's AMA data failed to capture ported numbers, Mr. Aronson denied that he had made such an argument and stated that he did not "doubt that BellSouth's AMA records reflect calls to ported numbers."³⁹ At the October 12, 2001 Hearing, Mr. Aronson stated that it was merely MCI's "hypothesis" that BellSouth's AMA recordings failed to capture ported numbers.⁴⁰ Mr. Aronson further testified that county-wide calling was not an issue with regard to MCI's local area because calls from any location within the three counties would be local calls.⁴¹ In other words, Mr. Aronson stated, "there's really no split county."⁴²

BellSouth's explanation for its decision to exclude approximately 166 million minutes of use from the account history is stated in a letter from Jerry D. Hendrix of BellSouth to Marcel Henry of MCI:

Third, BellSouth found that MCImetro invoiced approximately 166 million minutes of use (of approximately 1.3 billion total minutes) that appear unsubstantiated. This discrepancy is the result of MCI reporting more terminating minutes than BellSouth's switches show that we originated. As such, BellSouth adjusted the amount paid to exclude these minutes. BellSouth would welcome the opportunity to discuss these minutes and the differences in our records. However, as the originating carrier, BellSouth believes that its records as to the amount of originated traffic are accurate. This difference of minutes of use resulted in an

³⁸ Transcript of Proceedings, October 12, 2001, p. 94 (Testimony of Dan Aronson).

³⁹ Rebuttal Testimony of Dan Aronson, September 21, 2001, p. 6.

⁴⁰ Transcript of Proceedings, October 12, 2001, p. 70 (Testimony of Dan Aronson).

⁴¹ *Id.*, p. 81.

⁴² *Id.*, p. 93.

adjustment of approximately \$1M.⁴³

When asked to “explain how MCImetro’s recordings could show more minutes of use than BellSouth originated,” BellSouth’s witness Mr. Finlen stated that “MCImetro could be billing BellSouth for transit traffic, which should properly be billed to the originating third carrier.”⁴⁴ BellSouth’s witness Mr. McIntire states that:

It appears from the data we have gathered that MCImetro is billing BellSouth for *all* of the traffic traversing the BellSouth switches, not just the traffic originated by BellSouth. In other words, MCImetro is billing BellSouth for transit traffic, which is traffic that is originated by a carrier other than BellSouth, such as an Independent company (ICO), a CLEC other than MCImetro, or an Interexchange carrier (IXC). This is significant because MCImetro is not allowed to bill BellSouth for transit traffic. Instead, MCImetro is supposed to bill those carriers (ICOs, CLECs, and IXCs) directly.⁴⁵

Mr. McIntire disputes MCI’s explanation of the discrepancy in minutes of use:

MCImetro contends that BellSouth is failing to include minutes of use directed to ported numbers. In other words, MCImetro contends that when a BellSouth end-user calls a number that has been ported to MCImetro (a number that was assigned originally to BellSouth but is now assigned to MCImetro because the MCImetro end-user retained that number when changing from BellSouth local service to MCImetro local service), the BellSouth switches are not capturing those calls. MCImetro’s contention is simply wrong. BellSouth’s AMA data reflects ported numbers.⁴⁶

Re-rating of Usage Billings to Apply a Percent Local Use (PLU) factor

The parties’ dispute over the application of a PLU factor centers on Section 7 of Attachment IV, particularly subsections 7.1 and 7.3. Section 8.2 of Attachment IV, which immediately follows those provisions, states that “MCI and BellSouth agree to exchange such

⁴³ Letter from Jerry D. Hendrix to Marcel Henry, July 16, 2001, p. 2 (Attached to Direct Testimony of Dan Aronson, September 16, 2001).

⁴⁴ Direct Testimony of Patrick C. Finlen, September 18, 2001, p. 11.

⁴⁵ Direct Testimony of Richard McIntire, September 18, 2001, pp. 6-7.

⁴⁶ *Id.*, p. 7.

reports and/or data as provided in this Attachment in Section 7.3 to facilitate the proper billing of traffic.”⁴⁷

MCI contends that AMA data alone is sufficient to identify whether a call is local or intraLATA.⁴⁸ MCI also asserts that the Agreement does not require the use of a PLU as a substitute for the data available from the AMA.⁴⁹ MCI relies chiefly on the language in Attachment IV, Subsection 7.1, stating that this language makes it “clear that the usage information for billing are [sic] to be based on the AMA recordings of the MCImetro switch where the call terminates.”⁵⁰ MCI also calls attention⁵¹ to Attachment VIII, Section 3.1.7, which states:

BellSouth shall bill MCIIm for the Connectivity Charges incurred; provided that, for those usage based Connectivity Charges where actual charge information is not determinable by BellSouth because the jurisdiction (i.e., interstate, interstate/interLATA, intrastate, intrastate/intraLATA, local) of the traffic is unidentifiable, or for other reason, the parties shall jointly develop a process to determine the appropriate charges.⁵²

MCI states that this section “provides for an exception to the use of AMA recordings at the terminating party’s switch for the jurisdictionalization of terminating minutes of use.”⁵³

MCI describes its use of the AMA recordings as follows:

Based on Section 7 of Attachment IV of the interconnection agreement, MCI records all terminating minutes of use, “these recordings being necessary for each party to generate bills to the other party.” As provided in Section 2.2.1 of Attachment IV (“Compensation for Call Traffic Transport and Termination”), MCI then compares the originating and terminating telephone numbers (NXX’s) with the local calling areas in Section A3 of BellSouth’s tariffs. (For that purpose, Section 2.2.1.1 of the

⁴⁷ Interconnection Agreement, Attachment IV, Section 8.

⁴⁸ See, e.g., *Post-Hearing Brief and Proposed Findings of MCI WorldCom, Inc.*, November 7, 2001, pp. 9-11.

⁴⁹ *Id.*, p. 11.

⁵⁰ Rebuttal Testimony of Dan Aronson, September 21, 2001, p. 11.

⁵¹ Direct Testimony of Dan Aronson, September 18, 2001, p. 5.

⁵² Interconnection Agreement, Attachment VIII, Section 3.1.7.

⁵³ Rebuttal Testimony of Dan Aronson, September 21, 2001, p. 11.

agreement requires BellSouth to provide "an all-inclusive list ... of NXX's pertaining to section 2.2.1 above" so that MCI can correctly identify local calls.)⁵⁴

MCI does, however, resort to the PLU under certain circumstances, as indicated by Mr.

Aronson at the October 12, 2001 Hearing:

Q. Is there ever a time that MCI finds it necessary to use BellSouth's PLU?

A. In the instances where the originating number may not be provided in the AMA record.

Q. How often does that happen?

A. I'd have to do a study.

Q. Can you estimate?

A. I'd say less than 1 percent.

Q. But it does happen?

A. Yes.

Q. When it happens, do you bill using the PLU?

A. I believe we do.⁵⁵

Mr. Aronson further testified that MCI does not use its PLU in determining the number of minutes of use to be billed, but rather that the PLU is a "classification mechanism based on the AMA data."⁵⁶

MCI states that "BellSouth, however, has claimed a unilateral right to make its own

⁵⁴ *Post-Hearing Brief and Proposed Findings of MCI WorldCom*, p. 4. At the October 12, 2001 Hearing, Mr. Aronson described MCI's procedure as follows:

Q. Mr. Aronson, in MCI's process then for determining the jurisdiction, the AMA data is reviewed, and that data consists of the NPA/NXX's for the originating party and the terminating party; isn't that correct?

A. Yes.

Q. And MCI looks at the NPA/NXX to determine the geographic location of the parties who are making the calls; isn't that correct?

A. Yes.

Q. And it's your position, isn't it, that MCI's switch knows where the geographic location of that caller is, based on the NPA/NXX; is that correct?

A. Not the switch per se but reference tables within the billing system.

Q. And where do those come from? Do those come from the diskette that was provided by BellSouth?

A. Those come from tables that are billed, based upon the exchange areas within the BellSouth tariffs.

Q. But how do you know that the NPA/NXX is geographically connected to a particular place?

A. From the industry standard local exchange routing guide.

Transcript of Proceedings, October 12, 2001, pp. 53-54.

⁵⁵ Transcript of Proceedings, October 12, 2001, pp. 59-60 (Testimony of Dan Aronson).

⁵⁶ *Id.*, p. 95.

determination of which calls are local and which calls are intraLATA based, not on the local calling zones set forth in BellSouth's tariffs but on how a call is perceived by the subscriber."⁵⁷

MCI explains,

If, for example, the subscriber has an optional calling plan that allows him to make flat-rated, unlimited calls between Jackson, Tennessee and Memphis, Tennessee, BellSouth argues that all such calls should be treated as "Local Traffic" under the agreement (tr. 129) even though Jackson and Memphis are not in the same local calling area.⁵⁸

MCI argues:

The agreement states that terminating minutes are measured and billed by the terminating carriers. Section 7.1. Nothing in the agreement allows the originating carrier to dictate to the terminating carrier how to separate terminating local traffic from terminating access traffic. Nor is there any language in the agreement to support BellSouth's theory that the definition of "local traffic" depends upon the perception of the customer rather than where the call originates and terminates. To the contrary, the agreement requires BellSouth to provide MCI BellSouth's "NXX" data so that MCI can accurately separate local from intraLATA traffic for billing purposes.⁵⁹

Further, MCI states that BellSouth's position is inconsistent with FCC and TRA orders:

Furthermore, BellSouth's definition of "Local Traffic" for reciprocal compensation purposes is directly contrary to federal law and the rulings of the TRA. As the TRA noted in the Intermedia arbitration decision (docket 99-00948, Order issued June 25, 2001), the FCC has ruled that "traffic originating and terminating outside of the applicable local calling area would be subject to interstate and intrastate access charges." Intermedia Order, at 43, quoting paragraph 1035 of the FCC's *First Report and Order*, CC Docket 95-185, FCC 96-325. Based on the FCC's rulings, the TRA declared in the Intermedia Order (at 42-43) that "calls to a NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed should be treated as intrastate, inter-exchange traffic and, therefore, agree[d] with BellSouth that calls to and from such calling areas are non-local" for reciprocal compensation purposes. In that decision, the TRA specifically held that calls made via BellSouth's Foreign Exchange ("FX") service should be treated as intraLATA toll calls even though such calls are perceived by the caller as local calls. Order, at 43.⁶⁰

⁵⁷ *Post-Hearing Brief and Proposed Findings of MCI WorldCom*, p. 4.

⁵⁸ *Id.*, pp. 4-5.

⁵⁹ *Id.*, p. 5.

⁶⁰ *Id.*

BellSouth contends that the Agreement requires the use of a PLU as a supplement to the AMA data.⁶¹ BellSouth argues that AMA recordings are insufficient and therefore a PLU must be employed.⁶² BellSouth states that in arriving at the number of minutes of use, it “utilizes a two-step process in determining the jurisdiction of traffic (*i.e.*, whether a call is local, IntraLATA, or InterLATA).”⁶³ Use of the AMA recordings is just the first step of BellSouth’s process; the NPA/NXX data from the AMA only provides a “starting point” in the determination of jurisdiction.⁶⁴ BellSouth states that the second step is a comparison of the AMA data to “customer service record (‘CSR’) information to determine whether any one of thirteen extended calling area plans is used by the originating end-user.”⁶⁵ Explaining that these “extended area calling plans can transform a call that traditionally would be IntraLATA into a call that is local,” BellSouth states:

Thus, if BellSouth originates a call that is local, the jurisdiction is categorized as local. If the BellSouth-originated call appears to be IntraLATA, the originating telephone number is compared against BellSouth CSR records to determine if the originating end-user has a calling plan under which the call would be local. If the call is in fact local because of the plans, then the jurisdiction is counted as local. If the call is in fact IntraLATA, then the jurisdiction is counted as IntraLATA. In addition, BellSouth must also determine whether any of the calls that appear to be IntraLATA are actually local calls due to the TRA-mandated program of county-wide local calling. BellSouth utilizes this comparison process in calculating a PLU that accurately reflects the percentage of local calls being terminated by MCImetro.⁶⁶

BellSouth denies that MCImetro is able to determine the jurisdiction of a call based solely on the AMA data. BellSouth states that the “raw AMA data,” which contains “nothing more than the originating and terminating NPA-NXX and the duration of that call,” fails to “take

⁶¹ *BellSouth Telecommunications, Inc.’s Post-Hearing Brief*, November 7, 2001, p. 12.

⁶² *Id.*, p. 18.

⁶³ Direct Testimony of Richard McIntire, September 18, 2001, p. 3.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

into account the fact that many end-users subscribe to local calling plans that change traditional local calling areas or the impact of county-wide calling.”⁶⁷ BellSouth states that “[w]ithout this calling plan information, which can only be obtained by BellSouth through proprietary CSR data, MCImetro cannot accurately determine the jurisdiction of a call that MCImetro terminates for BellSouth.”⁶⁸ BellSouth describes MCI’s approach as a two-step process, stating that MCI

has asserted that MCImetro determines traffic jurisdiction by first gathering the AMA data and second comparing it to the rate centers as set forth in the General Subscriber Services Tariff. This is also a two-step process, but MCImetro’s “Step-2” does not address the issues created by extended area calling plans and county-wide calling.⁶⁹

BellSouth’s argument in support of the PLU thus has a practical aspect, the notion that use of the PLU is made necessary by the insufficiency of the AMA recordings, even using MCI’s two-step process, for an accurate determination of traffic jurisdiction. BellSouth also finds support for this position in the Agreement, focusing on the provision in Attachment IV, Subsection 7.3 for exchange of PLU reports and the statement in Subsection 8.2 that such reports “facilitate the proper billing of traffic.”⁷⁰ “These provisions read together,” BellSouth states, “clearly indicate that the parties intended that a PLU would be used in the preparation of proper billing for traffic.”⁷¹ BellSouth contends that the Agreement was “an early generation interconnection agreement, which was negotiated soon after the Telecom Act came into existence.”⁷² “As a result,” BellSouth argues, “the intent of the parties at the time was, as Mr. Aronson conceded, the prevailing view among CLECs – that a PLU was the proper and best way to determine the jurisdiction of traffic.”⁷³ BellSouth cites testimony submitted by MCI on

⁶⁷ *Id.*, p. 4.

⁶⁸ *Id.*

⁶⁹ *Id.*, p. 5.

⁷⁰ Direct Testimony of Patrick C. Finlen, September 18, 2001, p. 9.

⁷¹ *BellSouth Telecommunications, Inc.’s Post-Hearing Brief*, November 7, 2001, p. 12.

⁷² *Id.*, p. 14.

⁷³ *Id.*

September 12, 1996 in Docket No. 96-01152, in which MCI's expert Mr. Brenner recommends the use of a PLU.⁷⁴ BellSouth states:

Mr. Brenner's testimony represented the position of MCI in 1996, when the contract at issue was negotiated, that a PLU should be used in all instances to measure the jurisdiction of traffic. The Interconnection Agreement between the parties adopts this same position and presumes that a PLU will be used to jurisdictionalize traffic between the parties.⁷⁵

BellSouth adds:

MCI contends that it is able to determine the actual jurisdiction of each call by first gathering the NPA/NXXs from the Automatic Message Accounting ("AMA") data and then comparing this information to the Local Exchange Routing Guide ("LERG") to determine the exchange as set out in BellSouth's General Subscriber Services Tariff.⁷⁶

While recognizing that the "Interconnection Agreement does define local traffic in reference to the exchanges as they are 'defined and specified in Section A3 of BellSouth's General Subscriber Services Tariff,'" BellSouth argues that MCI's contention that it can determine the jurisdiction of traffic on the basis of AMA recordings alone is "flawed" because "MCI assumes that the definition of 'exchange' is limited to the one subsection of BellSouth's General Subscriber Services Tariff, § A3.6, which lists various local exchange areas under BellSouth's tariff."⁷⁷

The flaw in MCI's method, as BellSouth sees it, is that

Reference to the tariff in its entirety, however, reveals that the tariff further "defines and specifies" the exchanges in other provisions of the A3 tariff. The tariff, when read in full, sets out a list of local exchanges *and also* provides several exceptions to those local exchanges, including

⁷⁴ See *id.*, pp. 14-15. Mr. Brenner states, for example, that "[t]o avoid the imposition of disparate and inefficient administrative costs, state regulators should require all carriers, incumbents and entrants alike, to report a percentage local traffic amount subject to an auditing requirement as the basis for compensation payments for transport and termination. This would mirror the current practice for jurisdictional reporting of terminating switched access." *Id.*, p. 15.

⁷⁵ *Id.*, p. 15.

⁷⁶ *Id.*, p. 16.

⁷⁷ *Id.* pp. 16-17.

extended area calling plans and county-wide calling. When determining which calls are local, however, MCI ignores these exceptions, even though they are contained in the tariff.⁷⁸

BellSouth further states:

MCI also contends that it can state with certainty the geographic location of a calling party based on the NPA/NXX. This position ignores the issue of virtual designated exchanges, and it is also inconsistent with MCI's position in Docket No. 00-00309. In the context of that arbitration, MCI contended that it "should be permitted to assign NPA/NXX codes to end users anywhere within the LATA." (See Tennessee Matrix of Unresolved Issues, Issue 46, attached as Exhibit "B").⁷⁹

BellSouth adds:

In fact, the only accurate way to determine the geographic location on the county level of a particular end-user is to reference the Tax Area Record ("TAR") code established for each telephone number. These codes correlate a particular telephone number with a particular geographic local within a county. BellSouth maintains the TAR code database for this purpose, and MCI does not participate. MCI's witness was unaware of the TAR code database and conceded that he was unfamiliar even with the term "TAR." (Tr. at p. 55, lines 1-11).⁸⁰

Dispute Resolution Procedures

In the course of their arguments, the parties have raised the additional issue of whether the parties have complied with the provisions in the Agreement for resolving disputes. Each party accuses the other of a lapse in this area. MCI argues:

BellSouth has also not t [sic] attempted to utilize the dispute resolution procedures in the interconnection contract. The "Bill Reconciliation" procedures, which are contained in Section 3.1.18 the Connectivity Billing Section of Attachment VIII, very clearly spell out procedures for resolution of disputes concerning connectivity billings. Section 3.1.18.4 provides a process for dispute resolution and escalation of disputes through various management levels. Rather than go through this process, BellSouth has chosen to simply withhold payment of reciprocal compensation on the basis of a notation of "OVERBILLED

⁷⁸ *Id.*, p. 17; see Transcript of Proceedings, October 12, 2001, pp. 122-23, 134-35:

Q. Does the interconnection agreement treat calls as local to the same extent that calls are treated as local in section A3 of BellSouth's general subscriber service tariff?

[Mr. Finlen] Yes. That's why they're termed as local.

⁷⁹ *BellSouth Telecommunications, Inc.'s Post-Hearing Brief*, November 7, 2001, p. 18.

⁸⁰ *Id.*

ACCORDING TO BELLSOUTH'S MOUS.”⁸¹

At the October 12, 2001 Hearing, Mr. Aronson explained MCI's own failure to use the dispute resolution procedure by stating that MCI “had discussions with [BellSouth] that indicated that we wanted to reconcile the usage differences in terms of did we initiate the time lines.”⁸² Mr. Aronson stated, however, that it is “for the billed party to initiate those billing dispute procedures.”⁸³ Mr. Aronson conceded that the issues raised in BellSouth's letter of July 16, 2001 were not brought to the Authority's attention until Mr. Aronson's affidavit was filed.⁸⁴

BellSouth disputes MCI's claim that BellSouth failed to utilize the dispute resolution procedures in the Agreement, stating that “BellSouth has invoked the dispute resolution process as stated both in its August 8 letter and its July 27 letter.”⁸⁵ BellSouth states that MCI insists that BellSouth “pay first, and dispute later,” although “[n]o provision of the Interconnection Agreement requires the parties to pay in advance of the dispute resolution process.”⁸⁶ BellSouth adds that requiring payment before utilizing the dispute resolution process would be contrary to the “consistent course of dealings between the parties.”⁸⁷ BellSouth states that “[r]ather than rely on the dispute resolution process in the contract, Section 3.1.18 of Attachment VIII, by which a dispute is escalated through the company and ultimately presented to the TRA, MCI chose instead to seek sanctions.”⁸⁸

⁸¹ Direct Testimony of Dan Aronson, September 16, 2001, p. 5; *see also* Transcript of Proceedings, October 12, 2001, p. 75 (Testimony of Dan Aronson).

⁸² Transcript of Proceedings, October 12, 2001, p. 92 (Testimony of Dan Aronson).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *BellSouth's Response to MCI Metro Access Transmission Services, Inc.'s Motion for Sanctions for Failure to Comply with TRA Order*, August 24, 2001, p. 5.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *BellSouth Telecommunications Inc.'s Post-Hearing Brief*, November 7, 2001, p. 19.

FINDINGS AND CONCLUSIONS

Based upon the parties' filings and the entire record in this matter, including the testimony presented at the October 12, 2001 Hearing and a review of the information the parties submitted in response to the Authority's data requests, the Hearing Officer makes the following findings and conclusions.

Re-rating of Local Usage Billings for the Period from April 4, 2000 through July 2001

Section 3 of Part A of the Agreement states the term of the Agreement, which is three years. This section also makes provisions for the expiration of the Agreement and the establishment of a "Follow-On Agreement." This section also states the terms under which the parties will perform in the event that no "Follow-On Agreement" has been established before the expiration of the Agreement, either through negotiation of the parties or the parties' submission to arbitration by the Authority, which would result in the "order" referred to in Section 3. The section provides that in such event "the terms, conditions and prices ultimately ordered by the State regulatory body, or negotiated by the Parties, will be effective retroactively to the day following the expiration date of this Agreement."⁸⁹

Section 3 further provides that "[u]ntil the Follow-On Agreement becomes effective, BellSouth shall provide Services pursuant to the terms, conditions and prices of this Agreement that are then in effect."⁹⁰ In accordance with this last sentence of Section 3, although the Agreement has expired by the terms stated in that section, as of April 2000, the parties are in effect operating under a new agreement having the same "terms, conditions and prices" as the now-expired Agreement itself.⁹¹

One of the terms of the new agreement, as of the expired Agreement, is Section 1.1 of

⁸⁹ Interconnection Agreement, Part A, Section 3.

⁹⁰ *Id.*

⁹¹ This new agreement is not the "Follow-On Agreement," which may contain negotiated or arbitrated terms that differ from those of the Agreement.

Attachment I, which provides that “[a]ll rates provided under this Agreement are interim, subject to true-up, and shall remain in effect until the Authority determines otherwise . . .”⁹² In its “Permanent Prices” docket, on December 19, 2000, the Authority established new rates for interconnection and unbundled network elements provided by BellSouth.⁹³ These new rates include a rate of \$.0008041 for end office switching.⁹⁴ The Authority’s establishment of this new rate triggers the provisions of Section 1.1 of Attachment I. Pursuant to that section, the rates for end office switching for the new Agreement is \$.0008041, effective from the expiration of the original Agreement, and all billing from that date shall be adjustment, or “trued-up,” to reflect the new rate.⁹⁵ Such adjustment should begin with the commencement of the new agreement, or April 2000, since the old Agreement is no longer in effect.⁹⁶

⁹² Interconnection Agreement, Attachment I, Section 1.1

⁹³ See *Final Order*, In re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish “Permanent Prices” for Interconnection and Unbundled Network Elements, Docket No. 97-01262 (February 23, 2001).

⁹⁴ See BellSouth Tariff, Tennessee Price Schedule, March 2, 2001, p. 5; *Notice of Permanent Rates*, March 7, 2001; BellSouth Revised Tariff, Tennessee Price Schedule, October 24, 2001, p. 5 (all in Docket No. 97-01262).

⁹⁵ Section 1.1 of Attachment I reflects the parties’ intention that the rates in the Agreement be subject to change and true-up upon the establishment of new rates by the Authority. The Agreement is not explicit as to the mechanism by which the establishment of new rates would take place. The arbitration order which preceded the parties’ negotiated Agreement is more clear on this point; referring to the same prices stated in the Agreement, the Arbitration Order provides that “such proxy prices shall remain in effect until such time as cost studies which comply with the ultimate decision of the Courts on the FCC Report and Order can be completed by the appropriate parties and reviewed by the Authority.” *Second and Final Order of Arbitration Awards*, Dockets No. 96-01152 and No. 96-01271 (January 23, 1997). There can be no doubt that the function anticipated in both the Arbitration Order and the Agreement was fulfilled by the Authority’s “Permanent Prices Docket,” Docket No. 97-01262.

The tariff provision cited by MCI, which is BellSouth’s Competitive Local Exchange Carrier Tariff, Section C1.1.E, appears at first to negate the effect of the Authority’s action in “Permanent Prices,” or to involve the interpreter in a perpetual circle of provisions. The tariff provision states that the tariff incorporating the new rates does not supersede the provisions of any “currently effective” agreement between BellSouth and a CLEC, and this would seem to include the rates of any existing agreement. At the same time, the tariff provision preserves any condition in an existing agreement which is inconsistent with the tariff, and this would include the true-up provision of Section 1.1 of Attachment I. To give effect to the parties’ intention that the rates in the Agreement be subject to change and true-up upon establishment of new rates by the Authority, the terms of Section 1.1 of Attachment I must be held to prevail over the potential limiting effect of Section C1.1.E of the Tariff.

⁹⁶ BellSouth seems, as MCI suggested at the October 12, 2001 Hearing, to have come to its position that the true-up should go back to April 1997 in mid-course. It was, after all, Mr. Finlen’s own direct testimony, and not Mr. McIntire’s, that stated that the true-up went back to April 2000, and thus Mr. Finlen disagreed with his own prior testimony. It is not necessary, however, to determine that BellSouth waived the argument that Attachment I, Section 1.1 requires a true-up back to April 1997, since this provision was only in effect with reference to the beginning of the new agreement when the Authority ordered new rates in its “Permanent Prices” docket.

Re-rating of Usage Billings to Apply a Percent Local Use (PLU) factor

Attachment I, Subsection 7.1 of the Agreement (“Interconnection and Reciprocal Compensation”) states:

Compensation for the exchange of local traffic is set forth in Table 1 of this Attachment and shall be billed based on per-minutes-of-use and shall be measured in accordance with Attachment IV.⁹⁷

Section 7 of Attachment IV, quoted above, provides the terms for measurement of usage.

Although it leaves something to be desired in the area of clarity and explicitness, the language of Section 7 supports MCI’s position that the Agreement requires the use of AMA recordings for the purpose of billing for reciprocal compensation for local traffic but does not require the use of a PLU. In fact, the Agreement does not make clear what the purpose of the PLU is, whether as a substitute for the AMA recordings, which is essentially BellSouth’s position, or as a supplement on the limited occasions when the AMA recordings are insufficient, as appears to be MCI’s actual practice.

Further, it is reasonable to construe the Agreement as requiring the use of AMA recordings for billing purposes and providing for the use of PLU in those instances when the AMA data proves insufficient to distinguish local from intraLATA calls. Section 7.1 of Attachment IV states that “[e]ach party **shall** calculate terminating minutes of use based on standard Automatic Message Accounting (AMA) recordings . . .”⁹⁸ This subsection further states that the AMA recordings are “**necessary** for each party to generate bills to the other party.”⁹⁹ Subsection 7.3 merely provides for a “usage report” containing PLU information. Taken together, these provisions do not require or provide for the substitution of PLU information for the AMA recordings in preparation of bills for local traffic. The parties are

⁹⁷ Interconnection Agreement, Attachment I, Section 7.1.

⁹⁸ *Id.*, Attachment IV. (Emphasis provided.)

⁹⁹ *Id.* (Emphasis provided.)

required to provide the PLU information, but the Agreement does not state that such information is “necessary” for generating bills, as with the AMA recordings.

BellSouth’s contentions regarding the effect of local calling options on the use of the AMA do not alter this conclusion. BellSouth argues that other terms in the Agreement itself, operating by reference to BellSouth’s General Subscriber Services Tariff (“GSST”), prove that the PLU is essential to the generation of bills for local traffic. BellSouth bases this argument on Section 2.2.1 of Attachment IV, which states:

The Parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the TRA. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section A3. Of BellSouth’s General Subscriber Service Tariff.¹⁰⁰

BellSouth argues¹⁰¹ that certain “Local Exceptions,” listed in Section A3.10.10 of its GSST, make the PLU necessary by causing calls of indeterminate origin to be included in the AMA data. BellSouth adduces the GSST in support of this argument by attempting to read the “Local Exceptions” in the GSST as part of the definition of Local Traffic contained in Subsection 2.2.1.

A careful reading of Subsection 2.2.1 shows that the definition of Local Traffic therein is actually self-contained: “any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange.” This definition does not incorporate any provision of BellSouth’s GSST; it simply refers to the GSST for the definitions of “Exchange” and “EAS exchanges.”

¹⁰⁰ Interconnection Agreement, Attachment IV, Section 2.2.1. Section 7.1 of Attachment I states:
Compensation for the exchange of local traffic is set forth in Table 1 of this Attachment and shall be billed based on per-minutes-of-use and shall be measured in accordance with Attachment IV.

Thus, the definition of “Local Traffic” specifically governs the billing of such traffic in Attachment IV.

¹⁰¹ *BellSouth Telecommunications, Inc.’s Post-Hearing Brief*, November 7, 2001, pp. 16-17.

Section A1 (“Definition of Terms”) of BellSouth’s GSST defines “Exchange” as “[t]he entire telephone plant and facilities used in providing telephone service to subscribers located in an Exchange Service Area.”¹⁰² The section defines “Exchange Service Area” as “[t]he territory, including the base rate, suburban and rural areas served by an exchange, within which local telephone service is furnished at the exchange rates applicable within that area.”¹⁰³ “Extended Area Service” is defined as “[a] type of telephone service furnished under tariff provisions whereby subscribers of a given exchange may complete calls to and, where provided by the tariff, receive messages from one or more exchanges without the application of Long Distance Message Telecommunications charges.”¹⁰⁴

These definitions from the GSST, which serve, but do not limit, the separate definition of “Local Service” in the Agreement, do not cause the term “Local Service” in the Agreement to include the local calling options set forth in Section A3.10.10 of the GSST. Those local calling options are not part of the self-contained definition of “Local Service” set forth in the Agreement. They are by their own terms “Local Exceptions”; that is, they are exceptions to the normal limitations on “Basic Local Exchange Service” set forth in the GSST.¹⁰⁵ As a result of these “Exceptions,” a BellSouth customer located outside of the local exchange areas involved in the Agreement may place a call to a BellSouth or MCI subscriber within those exchange areas that BellSouth bills to the customer as a local call. If placed to an MCI subscriber, such a call would appear on the AMA recordings for the BellSouth-MCI interconnection, but it would not become “Local Traffic” under the Agreement.¹⁰⁶ Thus, the definition of “Local Traffic” is not

¹⁰² BellSouth General Subscriber Services Tariff, Section A1.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*, Section A3.10.10.

¹⁰⁶ The fact that MCI uses a two-step process that includes, in the second step, information that is outside the BellSouth tariff, see Transcript of Proceedings, October 12, 2001, p. 54 (testimony of Dan Aronson), does not render its process inconsistent with the Agreement; rather, MCI’s process properly incorporates the Agreement’s provisions for use of the AMA and PLU and its definition of “Local Traffic.”

limited by the exceptions in the GSST, and, therefore, there is nothing in the nature of “Local Traffic” as defined in the Agreement that automatically discredits the AMA data or causes the PLU to supersede the AMA data.

Finally, the conclusion that the local optional calling plans are not included in the definition of “Local Traffic” in the Agreement, are not to be counted as Local Traffic, and thus do not necessitate the automatic, exclusive use of PLU information is consistent with positions taken by the Federal Communications Commission (“FCC”) and the TRA. In its *First Report and Order*, the FCC stated that “traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges.”¹⁰⁷ Similarly, the TRA ruled in Docket No. 99-00948 that “calls to an NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic for purposes of intercarrier compensation and, therefore, are subject to access charges.”¹⁰⁸

As to the practical side of this issue, and BellSouth’s argument that the AMA recordings alone are simply inadequate records of traffic between the parties’ customers, the AMA billing data provided to the Authority by MCI prove otherwise.¹⁰⁹ With certain easily made adjustments, as explained below, MCI’s billing records, based on the AMA recordings, properly reflect the usage for which reciprocal compensation is due under the Agreement.

Exclusion of Approximately 166 Million Minutes of Use from Account History and Schedule

As indicated in the letter of July 16, 2001, BellSouth excluded 166 million minutes of

¹⁰⁷ *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, 11 FCC Rec. 15499 (August 8, 1996), ¶ 1035.

¹⁰⁸ *Interim Order of Arbitration Award*, In Re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 99-00948 (June 25, 2001), p. 44.

¹⁰⁹ In response to an Authority data request, MCI submitted its invoice for “total usage billed” for the month of May 2001.

local usage, totaling approximately \$1 million, based on BellSouth's assertion that MCI had billed BellSouth for more terminating minutes of local use than BellSouth's switches showed were originated. As stated above, minutes of use should be based on standard AMA recordings made within each party's network as stated in the Agreement, specifically in Section 7.1 of Attachment IV.

The Authority issued data requests on November 14, 2001 to BellSouth and MCI to gather detailed data for use in determining the difference between BellSouth's originating minutes of use and MCI's terminating minutes of use. The Authority requested call detail records from the month of May 2001. BellSouth responded that it could not provide the information requested, stating:

BellSouth only maintains call details for sixty days because of the large volume of daily records (approximately 350 million call records daily.) Maintaining the data in any active format would add substantial cost to the billing process without providing any benefit to BellSouth or its customers. As a surrogate BellSouth maintains summary records, generated from the actual call detail, of usage online at a terminating NPA/NXX level for each company for a period of one year.¹¹⁰

MCI, however, did provide call detail records showing both originating and terminating NPA/NXXs, originating and terminating rate centers, and jurisdiction with total minutes of use. Upon analysis of the records provided by MCI and comparison with the summary provided by BellSouth, it appears that MCI's call records can be used to generate billings in compliance with the terms of the Agreement, provided certain adjustments are made. All calls outside the local area, as defined by BellSouth's GSST, should be excluded from the billing. Examples of these calls are:

¹¹⁰ BellSouth's Response to Authority Staff's November 14, 2001 Data Request, November 29, 2001, Item 1, p. 1. See also Transcript of Proceedings, October 12, 2001, pp. 164-67 (Testimony of Richard McIntire).

1. Calls originating from the Hernando, Mississippi rate center to the following NPA/NXX terminating numbers should not be included for purposes of calculating the amount owed: 901-248, Memphis, Tennessee; 901-251, Memphis, Tennessee; 901-252, Memphis, Tennessee; 901-290, Arlington, Tennessee; 901-291, Memphis, Tennessee; and 901-860, Collierville, Tennessee.

2. Calls originating from the Michigan City, Mississippi rate center to the following NPA/NXX terminating numbers should not be included for purposes of calculating the amount owed: 901-248, Memphis, Tennessee; 901-251, Memphis, Tennessee; 901-252, Memphis, Tennessee; 901-290, Arlington, Tennessee; 901-291, Memphis, Tennessee; and 901-860, Collierville, Tennessee.

3. Calls originating from the Mount Pleasant, Mississippi rate center to the following NPA/NXX terminating numbers should not be included for purposes of calculating the amount owed: 901-248, Memphis, Tennessee; 901-251, Memphis, Tennessee; 901-252, Memphis, Tennessee; 901-290, Arlington, Tennessee; 901-291, Memphis, Tennessee; and 901-860, Collierville, Tennessee.

4. Calls originating from the Memphis, Mississippi and Hernando, Mississippi rate centers to the following NPA/NXX terminating numbers should not be included for purposes of calculating the amount owed: 901-860, Collierville, Tennessee.

MCI records these numbers as part of its local calling area, but these calls are clearly interstate, not intrastate calls, and should be treated as such in all calculations of local minutes of use under the Agreement. These calls can be easily segregated within the AMA data, leaving an

accurate record of local traffic.¹¹¹

Dispute Resolution Procedures

The Agreement contains two (2) provisions pertaining to resolution of disputes. Section 23 of Part A (“Dispute Resolution Procedures”) provides as follows:

The parties recognize and agree that the Authority has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the parties agree that any dispute arising out of or relating to this Agreement that the parties themselves cannot resolve, may be submitted to the Authority for resolution. The parties agree to seek expedited resolution by the Authority, and shall request that resolution occur in no event later than sixty (60) days from the date of submission of such dispute. If the Authority appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses to be incurred. During the Authority proceeding each party shall continue to perform its obligations under this Agreement; provided, however that neither party shall be required to act in any unlawful fashion. This provision shall not preclude the parties from seeking relief available in any other forum.¹¹²

Section 3.1.18 of Attachment VIII sets out a separate process for “Bill Reconciliation.”

Subsection 3.1.18.1 requires each party “to notify the other party upon the discovery of a billing discrepancy ...”¹¹³ Further subsections, 3.1.18.2 through 3.1.18.4, establish a timetable for resolution of a billing discrepancy following the notice provided for in 3.1.18.1. Subsection 3.1.18.4.3 provides that “[i]f the dispute is not resolved within one hundred and twenty (120) days of the Notice of Discrepancy, the dispute may be resolved pursuant to Section 23 (Dispute

¹¹¹ A map exhibit submitted at the October 12, 2001 Hearing as well as testimony indicates that county-wide calling does not present the problem in this case that BellSouth suggests. For example, BellSouth’s witness Mr. McIntire was asked to address the issue of county-wide calling with reference to a map showing the MCI and BellSouth local calling area (Hearing Exhibit No. 3):

Q. Looking at this map, Mr. McIntire, can you give me an example of how an intracounty call might not be captured as a local call by MCImetro?

A. Looking at this map, the way that I see this is that the calling area goes to the county lines, and in this particular one occasion, I cannot say that there would be any county-wide calling problems with this one specific example that you’ve presented to me.

Transcript of Proceedings, October 12, 2001, p. 160.

¹¹² Interconnection Agreement, Part A, Section 23.

¹¹³ *Id.*, Attachment VIII, Section 3.

Resolution Procedures) of Part A of this Agreement.”¹¹⁴

Applying the terms of the Agreement, MCI has already proceeded under the provisions of Section 23 of Part A. When it filed its *Complaint*, MCI asked the Authority to resolve a “dispute arising out of or relating to this Agreement that the parties themselves cannot resolve,” namely the issue of whether the Agreement requires the payment of reciprocal compensation for ISP-bound traffic. This is not exclusively a billing issue, and therefore need not have been pursued initially under Section 3.1.18 of Attachment VIII. The remaining issues in this case, raised after the issuance of the June 15, 2001 *First Initial Order*, would, standing alone, more properly be termed “billing issues.” However, the remaining issues also derive from the Authority’s resolution in the *First Initial Order* and the July 12, 2001 *Order* of the basic reciprocal compensation issue brought before it through MCI’s *Complaint* pursuant to Part A, Section 23.

Because the remaining issues, though related to billing, arose out of the TRA’s Orders, the failure of either party to follow the dispute resolution procedures of Attachment VIII should not render that party’s position on the remaining issues invalid. Nor should such failure require additional action on the part of either party before the remaining issues can be considered by the Authority. Both parties have raised good faith arguments regarding the remaining issues, which were perhaps inevitable given the limited scope of the issues before the Authority at the commencement of the case and at the time of the *First Initial Order*.

Sanctions

In its *Motion for Sanctions*, MCI states that BellSouth has engaged in “a series of acts, including the unilateral changing of bills, withholding of information, and refusing to follow contract procedures for resolving billing disputes, which appear to reflect a pattern of anti-

¹¹⁴ *Id.*

competitive conduct.”¹¹⁵ On this basis, MCI states that it “believes that BellSouth is wrongfully withholding reciprocal compensation payments from competitive carriers for the purpose of pressuring those carriers into settling for less than the full amount owed.”¹¹⁶

At the October 12, 2001 Hearing, Mr. Aronson stated:

BellSouth has demonstrated a widespread pattern of avoiding payment of supportable charges while avoiding presentation of qualitative and quantitative bases for their withholding. This pattern has been and is evidenced in all states in which BellSouth is billed by WorldCom. The failure to respond in a responsible manner to the issues that are being discussed today is unique to BellSouth when compared to dealings with other carriers that WorldCom serves across the nation.¹¹⁷

Notwithstanding MCI's accusations, BellSouth shall not be subject at this time to sanctions for its alleged failure to comply with the Authority's previous orders in this case. BellSouth paid \$2.9 million within thirty (30) days of the June 15, 2001 *First Initial Order*.¹¹⁸ BellSouth presented good faith arguments in support of its decision to withhold additional amounts. Moreover, although MCI submitted calculations of the amounts withheld by BellSouth in support of its Complaint, the only issue presented to the Authority before the *Motion for Sanctions* was the issue of whether the Agreement required payment of reciprocal compensation for ISP-bound traffic; there was no specifically stated amount that MCI requested the Authority order BellSouth to pay, and no records upon which the Authority could have based a sum certain.¹¹⁹ Similarly, BellSouth could not have raised its argument based on the true-up provisions of Attachment I, Section 1.1 before the Authority's action in the “Permanent Prices”

¹¹⁵ *Motion for Sanctions*, August 17, 2001, p. 1.

¹¹⁶ *Id.*, p. 2.

¹¹⁷ Transcript of Proceedings, October 12, 2001, pp. 16-17 (Testimony of Dan Aronson).

¹¹⁸ See Letter dated July 16, 2001 from Jerry D. Hendrix of BellSouth to Marcel Henry of WorldCom, attached to MCI's Motion for Sanctions.

¹¹⁹ See Transcript of Proceedings, October 12, 2001, p. 28:

Q. MCImetro did not ask for a ruling on the number of minutes of usage in its complaint, did it?

[Mr. Aronson]: Not to my knowledge.

docket in December 2000.¹²⁰ Thus, although the Authority's July 12, 2001 *Order* directed BellSouth to comply with the *First Initial Order* by make further immediate payments, subsequent review of the parties' conduct following the *First Initial Order* reveals no conduct that warrants sanctions by the Authority. Nevertheless, the Hearing Officer may in the future impose sanctions upon either party for failure to comply with the Hearing Officer's or the Authority's Orders in this docket.

IT IS THEREFORE ORDERED THAT:

1. MCI's *Motion for Sanctions* is granted to the extent that BellSouth shall make additional payments to MCI as set forth below. In all other respects, MCI's *Motion for Sanctions* is denied.
2. Within twenty (20) days of the issuance of this Order, MCI shall submit to BellSouth a bill for payments for termination of ISP-bound traffic which has been withheld by BellSouth, such bill to be in compliance with the following restrictions:
 - a. The bill shall state a single amount due for termination of all traffic as yet unpaid by BellSouth, up to and including the date of issuance of this Order.
 - b. The bill shall reflect a credit for any amounts paid by BellSouth for ISP-bound traffic following the June 15, 2001 Initial Order.
 - c. The bill shall be based on MCI's AMA recordings.
 - d. The bill shall include in the category of local traffic only those calls which originate and terminate within the same local calling area.
 - e. The AMA billing shall be adjusted to exclude all calls not included in the Local Calling Area as defined in BellSouth's General Subscriber Services Tariff. Such calls include

¹²⁰ At the October 12, 2001 Hearing, Mr. Aronson conceded that BellSouth "would not be able to state a specific rate prior to any rate being set." Transcript of Proceedings, October 12, 2001, p. 29.

but are not limited to:

1. Calls originating from the Hernando, Mississippi rate center to the following NPA/NXX terminating numbers: 901-248, Memphis, Tennessee; 901-251, Memphis, Tennessee; 901-252, Memphis, Tennessee; 901-290, Arlington, Tennessee; 901-291, Memphis, Tennessee; and 901-860, Collierville, Tennessee.
 2. Calls originating from the Michigan City, Mississippi rate center to the following NPA/NXX terminating numbers: 901-248, Memphis, Tennessee; 901-251, Memphis, Tennessee; 901-252, Memphis, Tennessee; 901-290, Arlington, Tennessee; 901-291, Memphis, Tennessee; and 901-860, Collierville, Tennessee.
 3. Calls originating from the Mount Pleasant, Mississippi rate center to the following NPA/NXX terminating numbers: 901-248, Memphis, Tennessee; 901-251, Memphis, Tennessee; 901-252, Memphis, Tennessee; 901-290, Arlington, Tennessee; 901-291, Memphis, Tennessee; and 901-860, Collierville, Tennessee.
 4. Calls originating from the Memphis, Mississippi and Hernando, Mississippi rate centers to the following NPA/NXX terminating numbers: 901-860, Collierville, Tennessee.
- f. Calls terminated before and including April 4, 2000 shall be billed at a rate of \$.004 per minute of use.
- g. Calls terminated after April 4, 2000 shall be billed at a rate of \$.0008041 per minute of use.
3. MCI shall submit to BellSouth with its bill all AMA recordings upon which the bill is based, in electronic form and in a format that will permit BellSouth to determine readily whether such information is accurate and in compliance with the restrictions stated in this Order.
 4. Within twenty (20) days of receipt of the bill, BellSouth shall remit to MCI

payment in full of the stated amount, with the exception of payment for calls which BellSouth can demonstrate to have been billed not in compliance with the restrictions stated in this Order.

5. In the event that any dispute arises regarding the bill, either party may submit such dispute to the Authority.

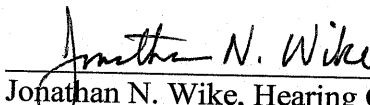
6. In the event a dispute is presented to the Authority, the complaining party shall provide the Authority with all information upon which the bill and the dispute are based, the opposing party shall have an opportunity to respond to the dispute before the Authority, and the parties shall abide by the Authority's resolution of the dispute.

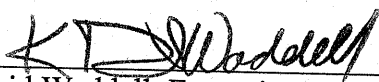
7. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

8. Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

9. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become the Final Order and shall be effective from the date of entry. Thereafter, any party aggrieved by the Authority's Final Order in this matter has the right to judicial review by filing a Petition for Review with the United States District Court.

ATTEST:


Jonathan N. Wike, Hearing Officer


K. David Waddell, Executive Secretary